

place in the Chinese Communist government in its attitudes and its policies toward its own people.

Madam President, I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. BUMPERS. I ask unanimous consent that I be permitted to proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. BUMPERS pertaining to the introduction of S. 2030 are located in today's record under "Statements on Introduced Bills and Joint Resolutions.")

TELEPHONE PRIVACY ACT

Mr. BUMPERS. Madam President, I recently introduced S. 1968, the Telephone Privacy Act. This bill, which has bipartisan support, has nothing to do with Linda Tripp or anybody else.

I first proposed legislation regarding telephone privacy in 1984 when it was revealed that Charles Wick, who was head of the United States Information Agency, had tape-recorded President Reagan and President Carter and several Cabinet officials 84 times without their knowledge.

Can you remember when you were a kid and you used to listen to telephone conversations? The announcer would call somebody or somebody would call in because they had the answer to a question, and you would hear beeping in the background. In those days, that was a sign that you were being recorded. Somewhere along the line, that practice was discontinued. Today, you can tape-record your very best friend and not tell that friend and hand it to all three networks for use on the evening news and no federal crime has been committed.

Not too long ago, Attorney General Reno testified before the Appropriations Subcommittee on State, Justice, Commerce, on which I sit. At that time, we were working on this bill, and I asked her about it. She said, "Well, Florida already has such a law that makes it a criminal offense to tape-record a conversation without telling somebody."

I said, "How long have they had the law?"

She said, "Since around 1970."

I said, "Were you the prosecutor in Dade County at the time that happened?"

She said she was.

I said, "Well, how did you feel about the bill when it was being debated?"

She said, "I favored it."

As usual, Congress doesn't get the message until after the States have acted—16 States have already enacted legislation almost identical to S. 1968, and here we sit still allowing people to invade our privacy, the most fundamental privacy when people have their guard down the most, by tape-recording conversations which can later be used for any purpose they choose. It is not an offense, and it ought to be.

I hope that some of my colleagues who may be listening will go back and look at my full remarks that were entered in the RECORD at the time I introduced that bill.

EXCULPATORY EVIDENCE AND GRAND JURIES

Mr. BUMPERS. Madam President, on a separate matter, I want to inform my colleagues that I am also working on legislation that will require prosecutors, before they ask for an indictment, to also give the grand jury any exculpatory evidence they may possess.

Prosecutors, as I previously outlined in some detail, have such an advantage, such an upper hand. Some of it is legitimate, and some of it is not. As one New York judge said, "A grand jury will indict a ham sandwich" if the prosecutor asked them to.

I had a prosecutor tell me one time, "This is the best grand jury I ever saw; it indicted everybody I asked them to indict." Of course they indicted everybody. They are putty in his hands.

I will just give you an illustration of the kind of case that I am trying to get at.

Let's assume that you are a prosecutor and you are getting ready to ask the grand jury to indict somebody for capital murder. Assume further that all the testimony that has been taken in that case said that the man who pulled the trigger and committed the murder was wearing a green jacket.

Assume further that the prosecutor has had information come to him personally, though it has never been presented to the grand jury, that it was, in fact, a red jacket.

I am making a rather extreme case here, but I ask you, in the spirit of elemental fairness, do you believe that the prosecutor, before he asks somebody to go on trial and possibly end up in the electric chair, is beholden in any way to tell the grand jury of totally exculpatory evidence that he may have in his possession?

There is a Supreme Court decision, the name of which I forget, in which the Supreme Court ruled 5-4 that the prosecutor is absolutely under no compulsion to tell the grand jury of any exculpatory evidence in his possession. If that isn't a betrayal of everything that we Americans believe, including fundamental fairness, if that is not a betrayal of everything I was taught in law school, I cannot think of a more egregious case.

Madam President, one of the reasons we have not had these debates in the past is because the crime rate in this country was soaring. And everybody was in a put-them-in-jail and throw-away-the-key mode. But I wanted my colleagues to stop and just reflect for a moment. God knows, I am not suggesting any guilty person should go free, but you heard that old story: Better that 1,000 guilty people go free than one innocent person be convicted.

I did not do very much criminal trial work when I practiced law. I used to

take maybe one case a year just so I would have to stay boned up on what the Supreme Court had ruled on, mostly rules of evidence and defendants' rights. And, yes, I defended a man one time that in my own mind I felt sure was guilty and the jury acquitted him. That sounds terrible to a lot of people who do not understand the criminal justice system. Everybody is entitled to a trial.

So all I am saying is the crime rates are coming down. People ought to be in a little more circumspect mood about what the Founding Fathers meant. The most important thing I said in my former remarks a moment ago about the bill I am introducing today is that the law is supposed to be a shield as well as a sword. It is supposed to protect the liberty of people in this country as well as to prosecute the guilty. It also has an obligation to defend and free the innocent. So that is all these proposals I am making are calculated to do; keep a firm commitment to our elemental belief in fairness, in the rights of the innocent and, yes, to prosecute and convict the guilty.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Madam President, I ask unanimous consent to speak for 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPREHENSIVE TOBACCO LEGISLATION

Mr. DORGAN. Madam President, before I begin talking about an amendment I intend to offer on the piece of legislation we will consider this week dealing with the IRS, let me say that the Congress Daily this afternoon indicates the Senate majority leader says "the compromise tobacco bill developed by Commerce Chairman MCCAIN may not be the base bill considered by the Senate when it takes up the tobacco issue. . ."

I am quoting:

When asked whether he plans to bring the McCain bill to the floor, Lott said: "I am referring to a bill; it could be McCain, a version of McCain, it could be something else."

Again, I was quoting.

I would hope that Senator LOTT, the majority leader, would understand that when the Senate Commerce Committee marks up a piece of legislation and passes it with only one dissenting vote, a piece of legislation that is embraced by Republicans and Democrats in the Senate Commerce Committee, that that would not be work that is discarded as we move to begin consideration of a comprehensive tobacco bill.